REMARKS

This Amendment and Response is in response to the *Non-Final* Office Action, dated July 8, 2004, where the Examiner has rejected claims 32-33, 41-42, 44-45, 55-56, 70 and 73-88. By the present amendment, applicants have added new dependent claims 89 and 90. After the present amendment, claims 32-33, 41-42, 44-45, 55-56, 70 and 73-90 are pending in the application. Applicants respectfully request an early allowance of pending claims 32-33, 41-42, 44-45, 55-56, 70 and 73-90.

A. Rejection of Claims 32-33, 41-42, 44-45, 55-56, 70, 73-88 under 35 U.S.C. § 103(a)

The Examiner has rejected claims 32-33, 41-42, 44-45, 55-56, 70, 73-88 under 35 U.S.C. § 103(a) as being unpatentable over Goldman et al. (USPN 4,995,074) ("Goldman") in view of Fujino, et. al. (U.S. Publication No. 2001/0040945) ("Fujino"). Applicants respectfully disagree.

Although the Examiner had retracted his rejection in the office action of January 16 2003, which stated "Goldman teaches the communication device keeping alive during said period of time, i.e. during hold period (col. 4 line 54 through col. 5 line 2) so that it would have been obvious to keep an upper layer protocol alive", in the office action of July 3, 2003, the Examiner combined Goldman with Dowling et al. (USPN 6,574,239) ("Dowling") to reject claim 32, which has now been retracted, and claim 32 has been rejected over Goldman in view of Fujino.

Applicants respectfully submit that the teachings of Fujino are no different than those of Dowling, with respect to claim 32 of the present application.

Just like Dowling, applicants respectfully submit that not only Fujino cannot be combined with Goldman in the way that the Examiner has presented, in fact, Fujino teaches

away from the invention of claim 32. Claim 32 recites: "A first modem for communication with a second modem over a communication channel, ... **said first modem comprising**: ... a transmitter capable of transmitting a hold request to said second modem in response to said attention signal; ... wherein said communication between said modems over said communication channel ceases for a period of time after transmitting said hold request, and wherein **said first modem keeps an upper layer protocol alive** during said period of time." (emphasis added.)

First, Fujino teaches that the modems disconnect, in contrast to claim 32, a key element of which is that the modems are placed on hold. To this end, Fujino reads:

> When the CGI program is activated, it requests the RA server (the RA 531 shown in FIG. 3) to temporarily disconnect the line for the voice-communications. Upon receipt of the request, the RA server transmits a temporary line disconnection request to the RA client (the RA 544 shown in FIG. 3) on the user B side. Upon receipt of the acknowledgement (ACK) of the line disconnection from the RA client, the RA server issues a disconnection instruction to the modem 530. Then, lines are disconnected between the modem 530 of the server 521 and the data adapter 527 on the mobile computer 522 side. When the line is disconnected, the data adapter 527 notifies the RA client of the disconnection of the line. However, since the RA client does not transmit a disconnection notification to the Web browser 545 which is an upper layer application, the Web browser 545 cannot recognize the disconnection of the line, but enters a waiting state with the session, in which the line is disconnected, is set active. (Page 4, Paragraph 63.)

Accordingly, Fujino is the direct opposite of modem-on-hold concept and teaches that modems are disconnected and that RA (Radio Module) blocks the disconnect notification from being transmitted to the Web browser 545 in order to prevent the Web browser from disconnecting.

Even more importantly, Fujino does not disclose, teach or suggest that a modem keeps the upper layer protocol alive, but merely that the Web browser is kept alive, because the disconnect notification is not sent to the Web browser.

Without hindsight, the Examiner should note that Fujino teaches away from the invention of claim 32, because how could the modems, which are taught to be disconnected in Fujino, keep the upper layer protocol alive in their disconnected state? If the modems are disconnected, then the modems are out of the picture and cannot, at the same time, keep the upper layer protocol alive.

Further, applicants respectfully submit that Goldman does not teach, disclose or suggest the modem-on-hold process of claim 32. As stated in the previous response to office action, in Goldman, modem 36 is unaware of any interruption and does not transmit a hold request to the remote modem. Rather, Goldman discloses that interface 34 "maintains the carrier to the host modem 36 and drops the terminal ready signal going to the host." (see col. 4, line 62 - col. 5, line 11.) Therefore, modem 36 receives the carrier signal and believes that there is a connection and host 16 is merely led to believe that terminal 14 is not ready, without realizing that the communication has been interrupted. Accordingly, modem 36 does not transmit a hold request to the remote modem. Second, the modems do not cease communication in response to the hold request. Third, the modems are unaware of any interruption and cannot keep the upper layer protocol alive. Therefore, in both Goldman and Fujino, the modems are incapable of keeping the upper layer protocol alive, because either the modems have been disconnected or the modems are unaware of any interruption in communication. Accordingly, applicants respectfully submit that claim 32 should be allowed.

Applicants respectfully submit that that claims 32-33, 41-42, 44-45, 55-56, 70 and 73-88 should be allowed at least for the reasons stated above.

B. New Claims 89 and 90

By the present amendment, applicants have added dependent claim 89, which depends from claim 32. Claim 89 recites "wherein a modem signal used for data communication between said first modem and said second modem is interrupted after said transmitter transmits said hold request to said second modem." This limitation further distinguishes claim 89 over Goldman, since Goldman teaches that interface 34 "maintains the carrier to the host modem 36 and drops the terminal ready signal going to the host." (see col. 4, line 62 - col. 5, line 11.) In contrast, according to claim 89, the carrier to the host modem is interrupted. Further, claim 90 depends from claim 44 and includes limitations similar to those of claim 89. The support for claims 89 and 90 may, for example, be found at page 18, lines 16-23 of the present application. Applicants respectfully submit that claims 89 and 90 should also be allowed.

C. Conclusion

For all the foregoing reasons, an early allowance and issuance of claims 32-33, 41-42, 44-45, 55-56, 70 and 73-90 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;
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